

Arkansas Burial Association Board
Rule Committee Meeting
December 12, 2013 @ 9:30am
Bail Bonds Conference Room 117
Via Teleconference 877-402-99753

Rule committee members present were: Steve Ballard, Bob Brooke, Auditor, Kat Hodge, Board Council, and Amy Goode, Executive Secretary. Committee members absent were: Normal Gilchrest and Melanie Posey. Also in attendance at the meeting were: Jackie Harris, Attorney for Drew County Burial Association, Robert Eichelberger, Guy Dillahunty, and Courtney Crouch, SFLIC, Pete Sims, Board Member, Gertrude Henderson and Debra Elerson, Henderson Burial Association.

The purpose of the meeting today was to discuss Rule 35.8.1 Dissolution of Burial Association. Ms. Hodge made changes to create a 3rd proposal from notes and discussion from the last meeting.

The copies of the proposals were emailed and faxed to the parties participating via teleconference.

The 3rd draft had several changes that were discussed or were concerns from the last meeting. Ms. Hodge began the discussion with the 3rd proposal and began by going over each section.

Ms. Elerson asked if attorney fees would be considered under debts and obligations of the association's assets. It was stated that yes it would be considered. Ms. Elerson further inquired how would an attorney know what their fees or debt would be? Ms. Hodge stated we could not draft a rule that is going cover every possible scenario. The initial meeting with the attorney should be able to provide an estimate to give the members; so they would know what their debts and obligations were to dissolve.

Operating expenses cannot exceed 25%, but it's the attorney's opinion is that attorney fees would not be considered as an operating expense, since the association would not be operating. However, Ms. Hodge stated that would be for the Board to decide. The Board will have to approve all costs associated with the dissolution. The Board's legal counsel would not advise the Board to approve dissolution to the detriment of members.

Ms. Elerson stated that maybe the rule should contain an allowable cap on expenses. Someone at the regular meeting did mention putting a percentage cap, but Hodge was not sure how workable that would be. Ms. Elerson further stated that after she had done the math that it was less than 3% for attorney fees based on figures given.

It was stated that unless your association is extremely in the black and/or if you have doubts of your debt to asset ratio being an issue you probably should not be petitioning the Board to dissolve. If a member is standing to gain an extreme windfall then it would be beneficial to the members to dissolve.

Mr. Harris stated that he did not think it would be an issue past Drew County, but if the Board or committee was to entertain a percentage cap it should perhaps be once the legal fees exceed a certain percentage; then seek Board approval.

Mr. Sims stated that he was against dissolving any association.

Ms. Hodge stated this was our 4th meeting and we have worked hard toward creating a rule, but hopes that the committee can hash this rule out to vote on today if possible. Mr. Ballard stated that with the work Mr. Harris has done that we will have concrete example to go by. The rules give the Board vast discretion to oversee these associations. The Board can always go back after this first rule is adopted to make changes if necessary. The Committee or Board does not want the Board to pass a rule that will hurt the members and that is why 35.8.1.a d) was added. There will be nothing in the rule that says dissolution requires an attorney. Each association will have to take a good faith effort to be sure members that would be adversely affected are sent a separate notice.

There was discussion at the regular meeting about policy holder/member certificate holder. Who owns the certificate? We need to be clear who is getting the pro-rata distribution. Ms. Elerson stated she thought the certificate owner or the person that has been paying the premiums be the member that receives the distribution. Sims stated that there have been cases where the owner of certificate has died, and the owner was never changed. Another member on the policy is paying the premium, so then how do you determine who gets the distribution? The best option is to pay each member their distribution. The committee had lots of discussion about 35.8.2.b) 3 the draft was changed to shall be paid to the Burial Association member.

Mr. Crouch stated that the Board is in such uncharted waters that it was his opinion it cannot be done.

Hodge defined pro-rata distribution and during discussion changed (a) (1) to "the remaining assets "and (2) to "each association member."

Mr. Eichelberger questioned if the pro-rata distribution was going to include a break down between the old and new business. Ms. Hodge stated that after she had reviewed the McEuen case that she determined there did not need to be a separation, but that she would turn to the committee. The committee did not see why the distribution could not be separated, but it was also raised that if the association is dissolving then the current rules would no longer apply. The members share would be a weighted amount, so therefore they would get their equal share based on that. The committee determined that 3 of that section would resolve that issue. (3) States: "The Board may approve an alternate plan of distribution if equity demands it and it is in the best interest of all association members."

Eichelberger stated 35.8.2 b) 1 should have language added that states "shall be transferred to a burial association of mutual agreement." That you should not force place someone into an association.

A member will have the amount of assessments paid in transferred to the receiving association. The participants had lots of great discussion about all types of scenarios. It was stated that the Board will probably have to eventually go back to rule making process to change the rule. Members that decide to opt out will be able to transfer to another association. The amount they have paid in would be transferred and the member would continue to pay on that policy with the new association.

Ms. Elerson stated it should be made clear in the additional letter that is sent out to let those members adversely affected know their options. That it would be probably in their best interest to stay in and making it clear their available options i.e. pre-need or annuity etc. Most people will not understand their options. It was mentioned having someone at the meeting to let members know the options.

Mr. Harris stated he agreed with Ms. Elerson that they could make the options clear. They did send out a general letter and then they were available to answer questions that arose from those letters.

Ms. Hodge stated that she had the following:

A notarized copy of the letter to be sent to all the association members stating the date, time, and place of the public meeting, as well as the particulars of the voluntary dissolution, including but not limited to...

1. The amount each member is expected to receive under the proposed dissolution.
2. The amount each member is expected to receive for those opting out.
3. The amount all claims, debts, and obligations of the Association to be satisfied out of the Association's assets.
4. Any other options that may be available to the member, including pre-paid funeral arrangements and potential transferred membership into another association.

Mr. Harris stated that the Board has concerns about costs or keeping costs down, but in the rule we are adding additional requirements that will have to be done. He stated he would suggest to Drew County to have someone at the meeting from Social Security to discuss the impact on those benefits, etc.

Ms. Hodge mentioned that we need to add something to the rule to be sure the items mentioned are discussed at the meeting. We need to be sure the people our noticed to appear at the public meeting to find out their options. We need added to rule 35.8.1 b) ... including a copy of the agenda which shall include the following items of discussion that are mentioned above.

Subsection e) a letter sent to all burial associations within the state requesting assumption of any member choosing to opt out. All premiums of the members opting out shall be transferred to the association of mutual agreement.

35.8.3 Change the first section from 90 to 60 days. Members opting out will have 60 days to notify the association they are opting out.

35.8.3 a) The Plan of Liquidation adding the following language : amount of premiums paid by each member.

Plan of Liquidation needs to include the following:

1. List of all members
2. Dates of membership
3. Amount of all assets owned
4. Amount of all claims, debt, and other obligations
5. Amount of premiums paid by each member
6. Amount each member is expected to receive under the pro-rata distribution

35.8.3 d) should also include a list of members choosing to opt out. Efforts associations made at placing those member opting out into another association. There shall be a statement concerning the placement of members transferring into another burial association.

Mr. Harris had concerns about 35.8.7 with the added language “upon approval by the Board”. The Board had no authority before and he felt there was no guidance. It doesn’t give guidance to what costs would or would not be covered. How much time would you consider to be reasonable? Ms. Hodge stated that it will be fact specific and based on each individual association. The Board cannot fashion a rule that will do that. He wanted to see some perimeters set on cost, but understood there was a remedy for that if there were an issue.

Ms. Hodge stated that every association that submits a petition to the Board to dissolve will be different, so the Board has to have that oversight. The burden is on the associations, if the association has doubt about whether their assets and their cost make a reasonable petition, then they should not be considering a petition.

There was no further discussion at this time and the meeting was adjourned.